

THE FATWA AUTHORITIES OF NATIONAL SYARIA COUNCIL OF MAJELIS ULAMA INDONESIA IN SUPPORTING THE PRINCIPLE IF SYARIAH COMPLIANCE

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THE FATWA AUTHORITIES OF NATIONAL SYARIA COUNCIL OF MAJELIS ULAMA INDONESIA IN SUPPORTING THE PRINCIPLE IF SYARIAH COMPLIANCE

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ABSTRACT

This paper explains the importance of the position and existence of fatwa in improving persuance to sharia principles. Fatwa in Indonesia is published by Majelis Ulama Indonesia. MUI becomes an important agency in the amidst frequent of non-compliance with Sharia principles in the traffic of Islamic economic and financial. To encourage the implementation of sharia principles in economic traffic, the fatwa published by the National Sharia Council of Majelis Ulama Indonesia has significant authority besides legislation that has been through the legislation process.

Keywords: Fatwa, DSN-MUI, Sharia Compliance.

INTRODUCTION

Not all Muslims in Indonesia are able to understand Islamic law directly from the Qur'an or Hadith. Even if there are some of capable people, not all Islamic legal issues in Indonesia have had a clear solution and clear solution of the Qur'an and Hadith. Therefore, other medium are needed that can accommodate the desire of Muslims in Indonesia to get a solution of legal problems in accordance with the guidance of Islam. Another source of Islamic law, namely *ar ra'yu*.¹ One manifestation of *ra'yu* or thought is *ijtihad* process instrument in the form of fatwa. According to Ibnu Mandzur, the fatwa is:

"Stated that fatwa in terms of language means someone or something that explains a predicament. Conceptually, fatwa also can be understood with a few definitions".²

As for al-Harrani, (Ahmad, 1984) fatwa is:

"It is (fatwa) the response from qualified jurists or the law and regulation revealed by them through it (fatwa)".

Fatwa offers a solution to the Islamic legal issues that arise with its form as a legal explanation or legal opinion. Fatwa is the right answer to the anxiety of Muslims in Indonesia who want to be in the corridor in accordance with Islamic law.

The fatwa for the majority Muslim population of Indonesia is so valuable. In addition to being bound to be bent in the provisions of Indonesian law, it is appropriate that Muslims in Indonesia are also obedient to the provisions of Islamic law. This is due to the obligation for

Muslims to make Islamic law as a legal guideline. For every human who has uttered *shahadatain* (two creeds), it is obligatory for him or her to follow the provisions of Islamic law³.

The desire of Muslims to make a fatwa as one of the sources of the law can not necessarily be implemented easily. The existence of other legal systems, namely the Western legal system and customary law system, which also compete to gain influence in the field of law in Indonesia to make fatwa must experience dynamics in order to exist and get a place (Nadirsyah, 2004). Based on the explanation above, the authors feel it is important to make this paper, to examine the position of fatwa and the DSN MUI in guarding the establishment of Sharia conformity in the economic traffic.

RESULT AND DISCUSSION

Sharia Banking and Reality of Pursuance Level to the Principle of Sharia

Although the development of sharia economy in Indonesia has been realized, (Hasan, 2014) especially the application of Sharia principles in Islamic financial institutions does not mean the system is free from various problems in its development. These problems include the problem of market share (customers) of Syari'ah Financial Institutions, which still seem to be "scrambling" within the same scope of Syari'ah banking. The lack of optimization of the development of Non-Bank Financial Institutions particularly in remote areas, the image of some people who argue that the systems of some Shari'ah Financial Institutions that develop nowadays, not much different from conventional financial systems, that are still problem and challenge for institutional and sharia economics. The crucial issue in the implementation of sharia economy is the existence of an economic system that is not in accordance with the epistemology, and principles of Shari'ah economy. As the determination of margin is still high, there is still a neglect culture of the values of justice in making profits and others. In murabahah case, for example, customers and sharia banks are positioned as buyers and sellers. Murabaha scheme at this stage is certainly not a problem from the side of fiqh (*halal-haram*, or legitimate or illegitimate). But on the other hand, Syaria bank determines the profit of sale exceeds the limit or incriminates the customer. Another problem is, related to the percentage of margin determination. Generally, in conventional financial institutional, interest rates that set range from 10% to 18% per yr. However, sharia is even higher to 25.8% per yr.⁴ Starting from the practice of syari'ah contracts in banking institutions, the implementation of sharia economy on the one hand is legitimate according to shari'ah as in the implementation of contract, but on the other hand still not in accordance with the principles and values of economic justice.⁵

In *murabahah* agreement, *murabahah* transaction is the majority of total financing of sharia bank funds, until there is an impression that all transactions are being "murabahah" (Abdullah, 2009; Wahyu, 2013).⁶ However, there are times when syaria banks do not want to bother with the purchase of goods (position as a seller), then use contract of *wakalah* to provide power to customers to buy the goods.

Based on several cases of sharia banking operational practices, the level of compliance with the insertion of sharia principles becomes a necessity. The presence of the Sharia Supervisory Council including the role of the community, especially the MUI, becomes significant in not only the aspect of the success of the Islamic finance institution in carrying out its intermediary function but also from the halal aspect of its business.

DSN MUI, Fatwa and Conformity of Syaria Principle in Indonesia

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Fatwa had taken a glorious period in the history of Islamic law development in Indonesia. On period of Islamic kingdoms in the archipelago, *fatwa* with *qanun* is an important section that guides Indonesian Muslims in implementing Islamic law. In some Islamic kingdoms of archipelago, the kings use *qanun* (the book of royal legislation which is the content of the fatwas of the Islamic scholars) as a legal guideline. In other areas, Muslims make the fatwa of Islamic scholars directly as a basic of life in accordance with the guidance of Islamic law. For example, Muslims in the kingdom of Banjar used to make fatwas of *Shaykh Arsyad Al-Banjari*, (Ahmad, 2010)⁷ prominent cleric in the kingdom of Banjar.

In the law system of Indonesia, the position of Islamic law is recognized as one of applicable legal system in Indonesia. Even in the Soeharto era, and then appear efforts to make positive Islamic law to enter into legislation. On the other hand, Islamic institutions are born and developed (Hooker, 2003). One of them is the Majelis Ulama Indonesia (MUI), as an independent institution in the field of Islam including economic issues recognized by the state (Moch, 2005).

The development of Islamic law in Indonesia has increased significantly with various forms. In the field of sharia economy, fatwa experienced a period of glory in Indonesia (Pradana, 2018). Through Law Number 21 Yr 2008 concerning Sharia Banking (formerly born PP No. 72 of 1992 concerning Bank Based on Profit Sharing Principle), normatively the fatwa is recognized and positioned by the state as a legal source for LKS (Lembaga Keuangan Syariah=Sharia Financial Institutions). However, the fatwa is limited only to the institutional fatwa which is the DSN-MUI (Dewan Syariah Nasional-Majelis Ulama Indonesia=National Sharia Council-MUI) filled by Islamic scholars and economists in Indonesia. Although normatively the fatwa has occupied a strategic position in the Indonesian legal system, but empirically there is still much doubt in applying these fatwas into the implementation practice by LKS, in this case Sharia Banking. This is because there is still a struggle of interest between the policy of Bank Indonesia, as the prime of Banking in Indonesia and Conventional Bank and Sharia Bank, with DSN-MUI fatwa. The difference between Bank Indonesia's policies and the DSN-MUI fatwa often occurs due to different ways of looking at the economic system. Bank Indonesia is still impressed using the approach of business and profit oriented in establishing banking policies. In contrast to the fatwa of DSN-MUI that was born purely from awareness to uphold the provisions of Islamic law in the field of economy. Whereas when viewed based on conceptual approach and statute approach, the fatwa of DSN-MUI binds the sharia financiers not only when the DSN-MUI fatwa becomes the content material in the Bank Indonesia Regulation, but also required as a guide for sharia banking in the manufacture and development of new products published as well as the operational activities of sharia banking and liabilities of Sharia Supervisory Council in sharia banking institutions to refer to the fatwa of DSN-MUI.

Fatwa as a legal opinion, by using hierarchy theory of legislation, formally legal only as judgment and law recommendation (Pradana, 2018). But it becomes different when the fatwa is published by the institution given authority by the state. Transformation and existence of the fatwa occurs in the field of sharia economy, with the existence of Law Number 21 of 2008 on Sharia Banking. The laws become a formal basis for the binding force of fatwa published by DSN-MUI for the actors of sharia economic activities, especially Sharia Banking (Hussein, 2016). Fatwa DSN-MUI serves as "legitimacy" that Sharia Banking products have been in

accordance with the guidance of Islamic Shari'ah, as the values and morality desired by sharia economic activities (Ahmad, 2009).

Based on the author's analysis, the fatwa published by the DSN-MUI (Dewan Syariah Nasional Majelis Ulama Indonesia=National Sharia Council of the Indonesian Ulema Council) is a binding positive law. Because, its existence is legitimized through the legislation by the government institutions (executive acts) in the form of determination of the executive institution that is political, so should be obeyed to the economic actors of sharia. Whereas, the DSN-MUI fatwa is binding under the laws and regulations. Such as Law no. 19 of 2008 concerning State Sharia Securities and Sharia Banking Law which recognizes the role of fatwa of DSN, besides PBI, Minister of Finance Decision, Bapepam-LK Head Regulation made by authorized official.

CONCLUSION

From the above article about the position of fatwa in the establishment of sharia compliance, it is concluded that the fatwa is the embodiment of *ar-ra'yu* (the mind) as the source of Islamic law recognized by the Islamic scholar. Fatwa in the construction of Islamic law in Indonesia has a very important position and experience a significant transformation of position and existence, especially in the field of Islamic economics. With the establishment of Law Number 21 of 2008 on Sharia Banking which became the formal basis of fatwa, published by the institution given authority by the state, namely the DSN-MUI (Dewan Syariah Nasional Majelis Ulama Indonesia=National Sharia Council of the Majelis Ulama Indonesia), became binding on the activities of sharia economic, Syariah banking. Fatwa of DSN-MUI serves as "legitimacy" that Sharia Banking products have been in accordance with the guidance of Islamic Shari'ah, as the values and morality desired by sharia economic activities. Fatwa, who was born from the institutional DSN-MUI, is an absolute requirement for the issuance of products of Islamic financial institutions to guarding the establishment of shari'ah compliance.

ENDNOTE

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1. Ishaq Syathiby, *al-Muwafaqat fi Ushul al-Syari'ah*. Juz I (Baerut : Dar al-Ma'rifah, t. th).
2. Ibn al-Manzur (n.d.), *Lisan al-Arab*, Kaherah: Dar al-Ma'arif. t.t.
3. Teori otoritas hukum Islam.
4. Financing document of one sharia banking in Palangkaraya. With details of margin of 2.15% per mon or 25.8% per yr in murabahah financing contract with syariah micro financing.
5. The principles of syariah such as the principles of tauhid, the principles of rahmatanlil'alam, the principle of justice, the principle of hurriyyah, the principle of phenomena, the principle of moral, the principle of halal/thayyib, the principle of honesty, the principle of trust, the principle of ta'awwun, the principle of mutual acceptance (antaradin, principles of elasticity, the principle of partnership, transparent principle, soc-profit oriented principle of balance and falah principle.
6. In Indonesia the margin level in murabahah is in the form of calculation in determining the profit margin used in BNI Syariah Bank which uses 40% of the interest rate of Indonesian bank on the basis of maintaining the fluctuating value (ups and downs) of economic condition in Indonesia, as well as by BSM, which uses approximately 55% of the Indonesian bank interest rate with the Flat rate system to determine the amount of profit margin. Abdullah Saeed, Questioning the Sharia Bank Criticism on Interpretation of Neo-Revivalist Bank Interest, translator: Arif Maftuhin, Jakarta: Paramadina.
7. Fatwa-fatwa of Sheikh Arsyad Al-Banjari in the field of Islamic law is embodied in many books of Islamic law written by him, one of them is the Sabilah Muhtadin that famous among Islamic law scholars in Indonesia as well as among student of boarding school.

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